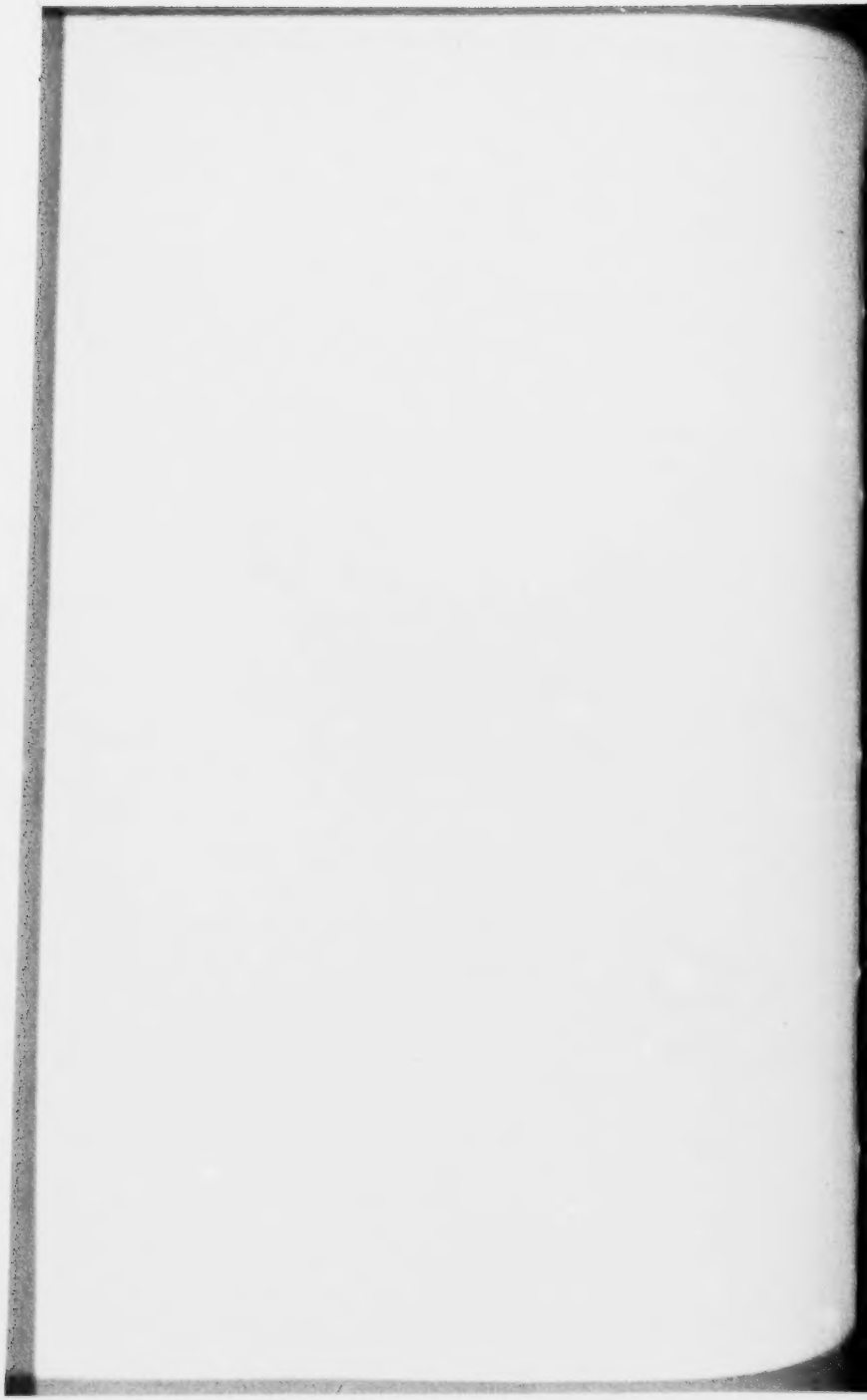

No. 309.

FILED
OCT 21 1901
JAMES H. McKENNEY,
Clerk.

Brf. of Wilson for Petitioner.

Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Oct. 21, 1901.

No. 309.

The Louisville Trust Company, Trustee, Etc., Petitioner,

vs.

Leonard Cominger.

Brief for The Louisville Trust Company, Trustee, Etc.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

AUGUSTUS E. WILLSON,
Counsel for Petitioner.

P. O. HOUSEHOLDER, PRESS, LOUISVILLE, KY.

29501

No. 309.

Supreme Court of the United States.

THE LOUISVILLE TRUST COMPANY, ETC., . . *Petitioner.*

vs.

LEONARD COMINGOR.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

BRIEF FOR PETITIONER.

STATEMENT OF THE CASE.

On December 5, 1898, Simonson, Whiteson & Co., and the individuals composing that firm, made a general assignment, under the laws of the State of Kentucky, for the benefit of their creditors. On the 14th day of February, 1899, the requisite number of creditors filed a petition in the District Court, praying that said assignors be declared bankrupt, upon the ground of such assignment. To this petition Comingor, the assignee, was made a party and was duly summoned. An adjudication in due season was had and the case referred to the proper referee. During the pendency of the cause the Judge of the District Court issued an injunction in effect

restraining the bankrupts, the assignee and others from taking any steps or instituting any proceedings affecting the estate of the bankrupts. His right to do this is expressly recognized by the Circuit Court of Appeals for the Sixth Circuit in Leidigh Carriage Co. vs. Stengel, 95 Fed. 637, where the Court said: "That the assignee for the benefit of creditors . . . may be made a party in the bankruptcy court, and may be required to hold the assets of the bankrupt subject to the order of the District Court in bankruptcy."

The referee, following the practice established by Judge Barr in the case of Etheridge Manufacturing Co., and under authority of the Act, Sec. 2 (3), appointed the Louisville Trust Company receiver, with directions to gather in and hold the assets of the bankrupts; and, also following the practice established by the judge in the same case, the referee on May 28, 1900, entered an order requiring the assignee to file before him (the referee) a detailed statement of the receipts and disbursements made by him from the estate of the bankrupts. (Rec., p. 8.) This statement was duly filed by the assignee, Comingor. (Rec., p. 6, etc.) On the 20th of June, 1900, the referee issued a rule against the assignee, D. A. Sachs, his attorney, and Zack Phelps, another of his attorneys, to show cause why they should not be required to pay over to the receiver certain sums paid to said attorneys and $3,398.90 held by the assignee. (Rec., p. 12.) The assignee, Comingor, filed before the referee a response to the rule showing that he retained said sum of $3,398.90 on account of his commissions as assignee before the bankruptcy proceedings were instituted, relying upon the hope that he would be entitled to more than that sum on final settlement; that for his services rendered the estate he believed the court would, on final hearing, allow him at least that sum; that he had no means and had used said money from time to time, relying

upon its being his; that he was unable to pay said sum into court, having neither money nor property, and that he had made efforts to borrow said money without success. His response closes with these words: "He asks the court for such relief in the premises as the court deems proper." (Rec., p. 15-16.)

On the 23d of June, 1900, the referee adjudged that response insufficient, and ordered the assignee to deliver to the receiver by time fixed the said sum of $3,398.90. (Rec., p. 16.)

On the 28th of June, 1900, the referee issued another rule against said Comingor, requiring him to show cause why he should not pay over to the receiver the sum of $3,000 recited in his report as having been paid to his attorneys, M. A., D. A. & J. G. Sachs, and the further sum of $200 recited in said report as having been paid to his attorney, Zack Phelps. (Rec. p. 17.) To this rule Comingor filed a response similar to that filed to the first rule, but further setting up that he had brought a suit in the State Court for the settlement of his accounts, and that he was subject to the jurisdiction of that court. (Rec., pp. 17, 18.)

This response was also adjudged insufficient, and the referee having ordered the said Comingor to pay to the receiver the said sum of $3,398.90, which he retained as his commissions, and the $3,000 paid by him to his counsel, and he having failed to obey said order, the referee reported the facts to the judge with a recommendation that said Comingor be dealt with for disobeying said orders. (Rec., pp. 27-8.) On the same day Comingor filed with the referee his petition for a a review by the judge. (Rec., p. 26-7.)

While the case was pending before the judge, he, on July 16, 1900, made a special reference to the referee to ascertain what services, if any, were rendered by the assignee and

what by his attorneys, the necessity therefor and the value thereof. (Rec. p. 29.) While the case was before the referee on the special reference, to wit, on November 10, 1900, the assignee, Comingor, tendered to the referee an amended response, raising the question of jurisdiction to entertain the rules *ab initio*. (Rec., pp. 29, 30.) This response was refused by the referee upon the ground that it was not pertinent to the matters contained in the order of reference. In due season the referee filed his report under this special reference, in which he found, among other things, that the assignee and one of his counsel had acted in bad faith in the administration of their trust and had not disposed of the estate for the interest of the creditors.

Comingor, having prayed for a review by the judge, he (the judge) on the 26th of January, 1901, dismissed the petition for review and ordered the said Comingor to pay to The Louisville Trust Company (who had in the mean time been elected trustee) the said sums of $3,398.90 and $3,000. (Rec., pp. 40, 41.) In order to secure a review of this decision by the Circuit Court of Appeals, Comingor filed his petition in that court on January 28, 1901. (Rec., p. 1, *et seq.*) In the Court of Appeals the trustee then filed a petition for a *certiorari* to supply the many necessary parts of the record which were not copied in the transcript, also a motion to dismiss the appeal for failure to file a complete record, and also motions to strike from the record thus taken up many extraneous matters. (Rec., p. 42.)

The motions to dismiss the petition and to add to the record were denied by the Circuit Court of Appeals. (Rec., p. 58.)

The motion to strike out the extraneous parts of the petition for review were not passed on.

The case on motion of the petitioner was, over the objection of the trustee, advanced for hearing. (Rec., p. 58.)

On April 2, 1901, the Circuit Court of Appeals entered a decree reversing the order of the District Court in confirming the orders of the referee, with directions to the District Court to set aside the referee's order requiring the payment of the moneys aforesaid. (Rec., p. 59.)

On April 10, 1901, the Circuit Court of Appeals filed an opinion in the case. (Rec., p. 60, etc.)

The case now comes before this Court, upon a *certiorari*, duly granted, to try *de novo* the questions involved in the petition of Comingor for a review by the Circuit Court of Appeals.

The questions involved are as follows:

1. Did the referee have jurisdiction by *summary process* to compel the assignee, Comingor, to deliver to the receiver in bankruptcy certain funds which had come to his hands as assignee?

2. Was the response of the assignee that he had, without authority of any court, used $3,398.90 in expectation that the same would be allowed to him as his commission as assignee a sufficient response, if true?

3. Was the response of the assignee to the rule to pay $3,000, claimed by him to have been delivered to his counsel for their services rendered to him as assignee, a sufficient response, when such response failed to show that the assignee had sought to repossess himself of that $3,000 from the attorneys after proper effort duly made?

4. Was the referee or the judge bound to believe and accept as true statements of facts contained in the responses of the assignee?

As new questions arising after the case reached the Circuit Court of Appeals, the following are involved:

(*a*). Was or not the petitioner required to file a complete transcript of the record in the Circuit Court of Appeals?

(*b*). Where a complete record is not filed in the appellate court, should the case on motion be dismissed?

(*c*). Should not matters extraneous to the record when recited in the petition filed in the Circuit Court of Appeals have been stricken out upon motion seasonably made?

(*d*). Is the jurisdiction of the State Court to administer upon an assigned estate ousted by an adjudication in bankruptcy?

Specifications of Errors Relied Upon.

The Louisville Trust Company, Trustee, petitioner, represents that the Circuit Court of Appeals erred in the following particulars:

1. In reversing, by its decree, the decree of the District Court confirming the orders of the referee requiring the assignee, Comingor, to pay to the trustee the sums of $3,398.90 and $3,000.

2. In vacating and setting aside by its decree the orders of the referee making absolute the orders made by him directing said Comingor to pay to the trustee in bankruptcy said moneys mentioned in his said orders.

3. The Circuit Court of Appeals erred, in its opinion, in finding that the referee and the District Court had no jurisdiction, by summary process, to compel the assignee, Comingor, to pay to this petitioner the sums last mentioned.

4. That the Circuit Court of Appeals erred, in its opinion, in holding that Comingor, by filing his responses to the rules without objecting to the jurisdiction, did not thereby consent to the jurisdiction.

5. The Circuit Court of Appeals erred, in its opinion, in finding that the response of said Comingor to the rule requiring him to pay $3,398.90 was sufficient.

6. The Circuit Court of Appeals erred, in its opinion, in finding that the response of said Comingor to the rule requiring him to pay $3,000 which had been paid by him to his attorneys was sufficient.

7. The Circuit Court of Appeals erred in overruling the motion to dismiss the case for want of a complete record.

8. The Circuit Court of Appeals erred in denying the motion for certiorari for diminution of the record.

BRIEF OF THE ARGUMENT.

The District Court in Bankruptcy Has Power by Summary Process to Compel an Assignee Holding Possession of the Estate of a Bankrupt Under a General Assignment to Deliver the Assets to the Trustee in Bankruptcy.

This is the important question in this case. The court will understand that I do not contend that the District Court has jurisdiction in a summary way to try a question of title between the trustee and third parties; but in gathering in the assets of the bankrupt under Section 2 (7) of the Bankruptcy Act, the trustee is not required to resort to a plenary suit when proceeding against a mere agent or custodian of the property.

I submit that Bryan, etc., vs. Bernheimer, decided by this Court April 15, 1901, is decisive of the question involved. It is there decided that a general assignment does not constitute the assignee as one holding for value, but simply makes him an agent for the distribution of the estate; that a proceeding against an assignee by rule does not involve the question of jurisdiction over a suit by the trustee against a

person claiming an adverse interest in himself. But, to use the language of the court: "The present case involves no question of jurisdiction over a suit by a trustee against a person claiming an adverse interest in himself."

It is the distinction implied by that quotation which justified the referee in proceeding by rule in the case at bar. Bryan vs. Bernheimer clearly holds that a purchaser from an assignee under a general assignment may by summary process be dispossessed of property which he had purchased from the assignee and paid for. If his purchaser may be thus dispossessed, why may not the assignee himself?

The Court of Appeals in its opinion (Record, page 67, etc.) cites Marshall vs. Knox, 16 Wallace, 551, to support its view that assets may not be recovered from such an assignee except in a plenary suit; but that court overlooked the distinction between a proceeding to compel an agent or bailee or custodian to deliver over property to the bankruptcy court's officer and an independent proceeding against a third party to determine a *bona fide* title to the goods in question. The distinction, however, was marked by the Court of Appeals for the Ninth Circuit *in re* Francis-Valentine Co., 94 Fed. 793, for there the case of Marshall vs. Knox was differentiated in this language:

> "In that case a lessor of the bankrupt had caused the sheriff, under a writ of provisional seizure, to take possession of certain property of the bankrupt, which the lessor claimed the right to hold as a pledge for the payment of rent which was due him. It was held that the District Court sitting in bankruptcy had no jurisdiction to proceed by rule to take the goods from the possession of the sheriff. The court, referring to the seizure of the goods, said: '*The landlord claimed the right thus to hold posses-*

sion of them until his rent was satisfied. This claim was adverse to that of the assignee.' These words quoted from the opinion fully explain the ground of the decision. It was because the claim was adverse to that of the assignee. In the present case the sheriff had possession, not in opposition to the right of the bankrupt nor in antagonism to its title, but his possession was based entirely upon the assumption that the title was in the bankrupt." (The italics are our own.)

It has been held in other lower courts that parties other than bankrupts may by rule be compelled to deliver assets to the trustee where such parties are not holding under adverse title.

In re Brooks, 91 Fed. 508.
In re Kenney, 95 Fed. 427.
In re Moore, 104 Fed. 869.

In re Smith, 92 Fed. 138, Judge Baker said :

" It follows that the assignee is a mere naked bailee for the creditors, without a shred of title or lawful authority to the possession of the bankrupt's estate ; and it would certainly be strange if, when the Bankrupt Court finds property in the possession of such a bailee, it may not in a summary way require him to surrender possession to the court, which alone has power to administer the estate."

In re Stokes, 106 Fed. 313, Judge McPherson said :

" The assignee of Airey does not hold the assigned property by an adverse title. He is the mere hand of the assignor for distribution, and is to be treated upon this application precisely as the assignor would have to be

treated. I think there can be no doubt about the court's authority to compel Airey by summary order to transfer his individual property to the trustee, and consequently that a similar power exists to compel his assignee to make a like transfer."

BY RESPONDING TO THE MERITS OF THE RULE, COMINGOR CONSENTED TO THE JURISDICTION.

The Supreme Court has declared :

"Moreover, the consent of the proposed defendant, Bernheimer, to this mode of proceeding is shown by the terms of his claim, in which, not protesting against the jurisdiction of the Court of Bankruptcy, he expressly submitted his claim to that court, and asked for such orders as might be necessary for his protection." (Bryan vs. Bernheimer, *supra*. See also *in re* Steuer, 104 Fed. 976.)

THE SUFFICIENCY OF THE RESPONSES TO THE RULES.

To the rule to pay $3,398.90 Comingor responded, in substance, that he had used the money in anticipation of its being allowed to him as commissions for services as assignee, and that he had no means with which to repay the same. Insolvency or inability to pay is not a legal response to a rule to pay, though on the question of punishment for failure to pay such insolvency is always considered by the court. The District Court has not punished nor made any order for punishing Comingor. It simply entered a decree requiring him to pay said sum to the trustee, and the petition for review now pending relates solely to that order. I earnestly

contend that if this Court holds in favor of the jurisdiction, the case should be affirmed right there and leave the question of the sufficiency of Comingor's response, averring insolvency, to be determined when the lower court shall have cited him for contempt in case he disobeys the order to pay. A decree may be entered against an insolvent. The enforcement or collection of that decree comes later.

The Circuit Court of Appeals, in its opinion (Rec., p. 60), uses this language: "The action of the referee assumes that the facts were as stated by the respondent." As I have shown, the facts if true would not be a sufficient response, but would be available only when the court comes to consider the punishment for disobedience. But, with all due respect, the Court of Appeals was not warranted in using the language quoted. The very contrary is the fair inference from the record. The referee's report on pages 26-7-8 of the record gives the dates upon which Comingor is shown to have appropriated the funds constituting this $3,398.90, and his later report (Rec., p. 31) details a culpable fraud on the part of Comingor in the administration of his trust. The first report shows that on the day before the petition in bankruptcy was filed Cominger appropriated $2,448.90; and no language of the referee justifies the inference that he "assumed that the facts were as stated by the respondent." On the petition for review the Court of Appeals, according to its own construction of the law, can only consider matters of law and not matters of fact. (Cunningham vs. German Insurance Bank, 103 Fed. 932; Courier-Journal Job Printing Co. vs. Schaefer-Meyer Brewing Co., 101 Fed. 699.)

The referee and the lower court adjudged the response insufficient—whether because they did not accept the same as true or whether after the hearing of evidence does not appear; nor can it be made to appear without a complete

transcript. For all this record shows the District Court might have deemed the response as "either fictitious or a manifest subterfuge," to use the language of Judge Seaman *in re* Mayer, 98 Fed. 841. Therefore the Circuit Court of Appeals had nothing upon which to base the ruling as to the sufficiency of the response, nor could it determine from the record before it whether the facts set forth in that response are true or false.

THE STATEMENTS IN THE RESPONSE ARE NOT BINDING UPON THE COURT OR REFEREE. THEY ARE NOT BOUND TO ACCEPT THEM AS TRUE.

In re Purvine, 96 Fed. 192, the bankrupt responded that $7,400 were lost or stolen from him.

In re McCormick, 97 Fed. 566, the bankrupt swore that $1,500 were stolen from his pocket or lost on a street-car.

In re Friedman, 1st National Bankruptcy News, page 332, the bankrupt testified that some $19,000 had been stolen from his pocket. Yet in all these cases the referee and the court refused to credit the statements, and orders, committing the bankrupts until they should pay the sums, were made. So in the case at bar, if it be assumed that it was proper for Comingor to plead his insolvency by way of response, nevertheless, the District Court might have been justified in refusing to accept the truth of his plea and in entering the order requiring him to pay. He cannot by his mere *ex parte* plea determine the question of whether or not a decree shall go against him, nor would the court, when the question of enforcing the decree comes up, accept his mere affidavit, but would, on the contrary, order or hold some investigation in order to ascertain the truth of his

plea, and when that truth should be ascertained, the proper action would be taken. The authorities cited by the Court of Appeals on pages 69 and 70 of the record do not militate against this view. They relate to the punishment for violating the orders previously made and not to the entry of the original decrees.

THE RESPONSE TO THE RULE TO PAY $3,000 INSUFFICIENT.

To the rule to pay to the receiver $3,000 claimed by Comingor to have been delivered to his attorneys for their services, he responded that said sum was paid to his attorneys while acting as his counsel; that he had no money or means of his own, and, further, that before the petition in bankruptcy was filed or before he had any knowledge or intimation that it was intended to be filed, and relying upon the expectation that he would be permitted to wind up his trust, he filed his petition in the State Court for a settlement, and that he is subject to the jurisdiction of the latter court. He nowhere claimed that the payments, or either of them, were in any way authorized by any court.

The sufficiency of the response as to the pendency of the suit in the State Court will be considered separately. Considering the rest of that response, I contend it is wholly insufficient. He does not claim that he demanded or requested his counsel to refund the money, nor does he claim that they are insolvent, or that he has taken any legal or other steps to obtain that sum from them. He paid it to them, and it is his duty to get it back. It looks like trifling with the court for him to file such a response, especially when it is shown in this record (page 52) that these same counsel agreed before the referee that if he would not certify them to the court for their

failure to return the money, they would honor any order which the court might make against their client Comingor. As stated in discussing the response to the rule to pay the $3,398.90, Comingor's insolvency would not constitute a sufficient response under any circumstances; but even if such fact were ordinarily sufficient, it could not avail him in this instance, unless he further showed that he had made every proper effort to repossess himself of the funds which his attorneys have. If this case is affirmed and the petition for a review denied, Comingor will still have an opportunity to recover the $3,000 from Messrs. Sachs, or else to show his inability to obtain it. And if he convinces the court that he has really spent the $3,398.90, and is unable to repay it, and further convinces the court that his counsel will not return and cannot be compelled to return the $3,000, surely the court will not punish him for his failure to do an impossibility; but, as above explained, the question of punishment has never arisen in the lower court, and I apprehend will not be determined on the petition for review until it has been first decided there.

The Decision of the Court of Appeals Might Exonerate the Assignee's Bondsmen.

Comingor gave bond when he qualified as assignee. If this fund is not recovered in the present proceeding, the trustee in bankruptcy will be compelled to institute an action in the State Court against Comingor and his bondsmen. Suppose this Court should hold that the District Court, whether by consent or otherwise, did have jurisdiction, but should further decide that the response of Comingor was sufficient, what might be the effect upon a plenary suit in the State Court against Comingor's bondsmen? They could plead in bar that the question of Comingor's liability had been adjudicated in

his favor in the Federal Court; and such a plea might be sustained. On the other hand, if the decree of the District Court is allowed to stand, Comingor's liability to refund said sums would be deemed as determined, and neither he nor his bondsmen could plead the merits of the claim in the State Court proceeding. The merits of Comingor's claim for compensation have been tried under the reference made by the judge to the referee on July 16th. (Rec., p. 29.) Evidence was introduced by the trustee and by Comingor concerning the extent of his services, the necessity therefor and the value thereof. He and two of his counsel testified on the occasion, and he made a stipulation about reading the testimony of other witnesses. (Rec., p. 32.) The referee reported adversely to the claim (Rec., p. 21), and the judge confirmed the finding of the referee, and in effect disallowed the claim by entering the order requiring Comingor to pay. (Rec., p. 40.) Comingor has had his day in court fully and completely, and nothing could be urged in the State Court in favor of his claim that was not urged in the Federal Court. The trustee, therefore, is anxious that the decision of the referee and the District Judge, establishing Comingor's liability for the funds which he appropriated, should be sustained; so that it may be binding upon the State court if hereafter the trustee brings a suit against Comingor and his bondsmen.

The Motion to Dismiss for Failure of Comingor to File a Complete Transcript of the Record Should Have Been Granted.

Rule 14 (3) of the Circuit Court of Appeals is in the same words as Rule 8 (3) of the Supreme Court. In Redfield vs. Parks, 130 U. S. 623, the court on its own motion refused to determine a case where the record was incomplete, and granted leave for the issuance of a *certiorari*. Surely, then, the Court

of Appeals should either have dismissed the case for want of sufficient record or have granted the motion to add to the record instead of denying said motion, as it did. (Record, page 58.)

The Jurisdiction of the State Court was Ousted by the Adjudication in Bankruptcy.

The assignment was made on December 5th. December the 8th the assignee brought a suit in the State Court to administer his trust. His object in going so speedily into the State Court was reported by the referee as a step in a scheme to defraud the creditors. (Rec., p. 35.)

The Circuit Court of Appeals in the Sixth Circuit in Leidigh Carriage Company vs. Stengel, 95 Fed. 637, opinion by Judge Taft, decided that the jurisdiction of a Federal court to wind up the affairs of a bankrupt is paramount. The court there said:

> "It is next objected in argument and the briefs, though we do not find an assignment of error specifically directed to the point, that the assets of this defendant bankrupt are in the hands of the assignee for the benefit of creditors, subject to the orders of the Probate Court; that the District Court in bankruptcy cannot obtain jurisdiction to administer the assets, which are in the course of administration and in the possession of officers of other courts. If this objection were to be sustained, it would seriously embarrass the enforcement of the bankruptcy law, and make it subordinate to the State insolvency and assignment laws, wherever an insolvent debtor who had committed an act of bankruptcy had placed his assets in the hands of the assignee, acting by State law under

the direction of the Probate Court. It is generally true that, as between courts of concurrent jurisdiction, the court which first obtains possession of the *res* must retain possession of it until the *res* has been finally disposed of, and any one else interested in the *res* must apply to that court if he desires relief with respect to the property in the possession of that court. But, as between District Courts sitting in bankruptcy and State Courts for the administration of insolvent estates, there is no concurrent jurisdiction. The Constitution of the United States, by giving to Congress the power to pass uniform bankruptcy laws, gives to the courts in which Congress shall vest this power paramount jurisdiction in bankruptcy proceedings. The orders in bankruptcy are, therefore, superior to those of a State insolvency court. Section 720, which forbids a court of the United States from enjoining proceedings in a State Court, expressly excepts bankruptcy proceedings. This is the plain intimation by Federal and paramount law, that where a Federal bankruptcy court shall take jurisdiction, there the State insolvency court must yield. Hence it is that the assignee for the benefit of creditors of the defendant company, the grantee in the deed, which is by the Federal law an act of bankruptcy, may be made a party in the bankruptcy court, and may be required to hold the assets of the bankrupt subject to the order of the District Court in bankruptcy."

Some of the lower courts have held that a general assignment is absolutely void because expressly declared a ground of bankruptcy, while others hold it is voidable until the adjudication in bankruptcy makes it entirely void. To hold that the State Court has jurisdiction to administer a trust, which by the adjudication in bankruptcy becomes void, seems

to me would be entirely untenable. If the assets of the bankrupt can be held in and administered by the State Court, the Federal court in bankruptcy would not be paramount as to those assets. In fact, unless the court in bankruptcy can obtain possession of and administer the assets, that clause of the bankruptcy law which makes it a ground of bankruptcy to make a general assignment, may be entirely inoperative so far as practical results are concerned. What was the object of Congress in declaring that the making a general assignment shall be a ground of bankruptcy? Manifestly it was to prevent the abuses and inequalities which result from the administration of the estates by the local courts. If, then, the jurisdiction of the State Court is not ousted by the adjudication in bankruptcy the purpose of that section of the bankruptcy law will be defeated. In the case at bar the State Court did order the funds in its repository paid over to the trustee in bankruptcy, but not until the officers of its court had been first paid their costs out of the same. To the extent that such costs were paid in the State Court that court and not the Federal Court administered the bankrupt's assets.

If the Trustee is compelled to resort to a plenary suit to recover this $3,398.90 retained by Comingor without leave of any Court and the $3,000 paid by him to his counsel, also without leave of Court, the State Court and not the Federal Court must determine the controversy as to these sums; and the State Court will then, to the extent of these two sums, be administering upon the assets of the bankrupt. And if the trustee brings such a suit or suits, he will be bound by the result of the decision of the court whose jurisdiction he himself invokes. Logically, it seems to me that one court or the other, the State or the Federal Court, should administer the whole estate.

I respectfully ask that the petition for review be denied.

AUGUSTUS E. WILLSON,

Counsel for the Petitioner, the Louisville Trust Company, Trustee, etc.

AUTHORITIES CITED.

Leidigh Carriage Co. vs. Stengel, 95 Fed., 637.

Bankruptcy Act, Section 2 (3 and 7).

Bryan vs. Bernheimer, (U. S. Sup. Ct., April 15, 1901).

In re Francis-Valentine Co., 94 Fed., 793.

In re Brooks, 91 Fed., 508.

In re Kenney, 95 Fed., 427.

In re Moore, 104 Fed., 869.

In re Smith, 92 Fed., 138.

In re Stokes, 106 Fed., 313.

In re Steuer, 104 Fed., 976.

Cunningham vs. German Insurance Bank, 103 Fed., 932.

Courier-Journal Job Printing Co. vs. Schaeffer-Meyer Brewing Co., 101 Fed., 699.

In re Meyer, 98 Fed., 841.

In re Purvine, 96 Fed., 192.

In re McCormick, 97 Fed., 566.

In re Friedman, 1 National Bankruptcy News, 332.

U. S. Supreme Court Rule 14 (3).

Circuit Court of Appeals Rule 8 (3).

Redfield vs. Parks, 130 U. S., 623.